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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/471,869	12/23/1999	JEFFREY PHILLIPS	E0295/7130-(8044

7590

01/04/2005

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EXAMINER

NGUYEN, CAM LINH T

ART UNIT

PAPER NUMBER

2161

DATE MAILED: 01/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/471,869

Applicant(s)

PHILLIPS ET AL.

Examiner

CamLinh Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-8,10,12-15,17-19,21-24,26-42,44,45,47-51 and 56-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11 is/are allowed.
- 6) ☒ Claim(s) 1,3-8,10,12-15,17-19,21-24,26-42,44,45,47-51 and 56-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's amendments to claims 26 and 37 are acknowledged. Consequently, claims 1, 3 – 8, 10, 12 – 15, 17 – 19, 21 – 24, 26 – 42, 44 – 45, 47 – 51, and 56 – 58 are pending. Claim 11 is allowed.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 26 - 27, 30, 37, 53, 56 – 58, are rejected under 35 U.S.C. 102(e) as being anticipated by Gusler et al (U.S. 2002/0156965).

♦ As per claim 26, 30, 37, 53,

Gusler et al (U.S. 2002/0156965) discloses a computer system having at least first and second backup storage systems to each store backup data from at least one client (Fig. 2), the at least first and second backup storage systems storing different backup data, comprising:

- “Receiving information related to backup activities of the second backup storage system at the first backup storage system” See Fig. 4, page 3, paragraphs 0037 – 0039. In particular:

- “First backup storage” corresponds to “backup file system 406” in client computer 402.

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- “Second backup storage” corresponds to “backup image/seed file” 414 in the server 400.
- “Information related to backup activities” corresponds to the backup images or data that stored in the backup file system 406.
- “A first controller ... to receive information” corresponds to the “image collection processes 412”.

Gusler teaches that plurality of clients can be connected to a server (page 2, paragraph 0022).

Each client includes a local backup system (first storage) and the server corresponds to the second storage. Each server stores plurality of client data. Therefore, the second storage stores different data in comparing with the first storage system.

♦ As per claim 27, 57 – 58,

- “Transmitting the information related to the backup activities of the second backup storage system... to the first backup storage system” See Fig. 5, paragraphs 0041 - 43.

♦ As per claim 56,

With all limitations as claimed in claim 26, further claims 56 include:

- “Providing only status of a most recent backup of the at least one work item” See paragraph 0036, wherein the system data repository includes the status of information such as installation status. A log is used to keep track all entries in the database. Old log entries are removed. Therefore, the system will provide only the recent information when the system is queried.

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1, 3 – 8, 10 – 15, 17 – 19, 21 – 24, 28 – 29, 31 – 36, 38 – 42, 44 – 45, 47 – 51, are rejected under 35 U.S.C. 103(a) as being unpatentable over Gusler et al (U.S. 2002/0156965) in view of Satagopan et al (U.S. 6,751,674).

◆ As per claim 1, 7, 12, 17, 22, 40, 44, 49,

Gusler, Jr. et al (U.S. 5,799,323) discloses a computer system comprising:

- “A plurality of backup storage systems” See Fig. 4, element 406, 414, Gusler.
 - “The first backup storage system” corresponds to “backup file system 406” in client computer 402.
 - “The second backup storage system” corresponds to “backup image/seed file” 414 in the server 400.

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- “At least one user interface, coupled to at least the first and second backup storage systems” See Fig. 1, element 104, Gusler.
- “Domain that includes at least the first and second backup storage systems and excludes the third backup storage system”.

Gusler discloses in Fig. 1 including one server with corresponding clients. This schema corresponds to the “domain”. In addition, Gusler also suggests that the system may include additional server, clients (Paragraph 0022). Clearly, Gusler suggests using “a third backup storage system to store backup data from at least one client”.

Gusler also teaches that the workstation (or server) contains a list of nodes from which images are to be retrieved. This list is stored in the repository, which is a database of information about the various clients that the server is supporting (Paragraph 0036). The Gusler may be obviously modified to support multiple domains in the following fashion:

- Gusler teaches the use of TCP/IP for the exemplary network protocol (Gusler: p.3, [0036]).
- It is well known in the art that TCP/IP supports “multi-homing” e.g. locating a single machine on multiple domains.

Satagopan, on the other hand, discloses an evidence for this well-known method for control data between storages. Satagopan teaches that a domain controller is implemented on servers, which is a collection of domains (col. 6, lines 2 – 5, Satagopan). Satagopan also teaches that a domain may be restricted to a defined, interrelated portion of a database or an entire database (see col. 6, lines 5 – 8). Referring to fig. 2 of Satagopan, each domain is associated with particular clients. Therefore, only a certain client can be permitted to access a particular domain.

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In other word, Satagopan teaches domain storage that capable of excluding another domain's user so that at least one user interface is not authorized to receive information from that domain.

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to situate the server of Gusler on multiple domains via the multi-homing feature of TCP/IP, said server of Gusler is able to manage clients on different domains, or apply the teaching of Satagopan into the invention because it is a common practice for servers within the context of security (e.g. firewalls, portals, etc.) which reads on the practice stated in the pending application.

♦ As per claim 28 - 29, 31 - 32, 38 - 39, 8, 10, 13 - 15, 18 - 19, 21, 23 - 24, 41 - 42, 45, 47 - 48, 50 - 51, the combination of Gusler and Satagopan disclose:

- The Gusler server can be situating on multiple domains via the multi-homing feature of TCP/IP, which includes a different client with respective backup storage. This client corresponds to the third backup storage system.
- The multi-homing is a common practice for servers within the context of security (e.g. firewalls, portals, etc.), in which only system in the same domain can see data or receive data each other and cannot see or receive other data from different domain.

♦ As per claim 33 - 36, 3 - 6, e combination of Gusler and Satagopan disclose:

As discussed above, the Gusler server can be situating on multiple domains via the multi-homing feature of TCP/IP, which included a different client with respective backup storage or apply the teaching of Satagopan into the invention. However, the domain that's not include this client can be acted as domain master and is used to stored client identifiers (paragraph 0036)

- "The domain master stores at least one second identifier ... one domain" See Fig. 1.

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- “A second controller” corresponds to the components in the backup processes 404 of Fig. 1.
- “The domain master authorizes each controller to transmit the information... only within one domain (See Fig.5).

♦ As per claim 11, e combination of Gusler and Satagopan disclose:

Claim 11 is rejected based on the rejection of claims 1,3 – 6.

4. Claims 54 - 55 rejected under 35 U.S.C. 103(a) as being unpatentable over Gusler et al (U.S. 2002/0156965) in view of Logan et al (U.S. 5,968,121).

Gusler does not clearly teach that the system will determine a lapsing time period to automatically generating the report. However, Logan discloses a method for replicating a resource. Logan teaches that the object may include replication-scheduling properties, which specifies the frequency with which applications will poll other sites for changed information (col. 9, lines 40 – 51). It would have been obvious to one with ordinary skill in the art at the time the invention was made to apply the teaching of Logan into the system of Gusler, because the combination would reduced the inconsistency between sites by backup regularly.

Response to Arguments

5. Applicant's arguments with respect to claims 1, 3 – 8, 10 – 15, 17 – 24, 28 – 29, 31 – 36, 38 – 42, 44 – 45 and 47 – 51 have been considered but are moot in view of the new ground(s) of rejection.

2. Applicant's arguments filed 07/02/2004 have been fully considered but they are not persuasive in part.

♦ As per claims 26 – 27, 30, 37,

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Applicant's argues that the Gusler fails to meet the limitations of amended claim 26 including: "the at least first and second backup storage systems storing different backup data". The Examiner respectfully disagrees.

Gusler teaches that plurality of clients can be connected to a server (page 2, paragraph 0022). Each client includes a local backup system (first storage) and the server corresponds to the second storage. Each server stores plurality of client data. Therefore, the second storage must store different data in comparing with the first storage system.

In addition, response to applicant's argument that the Gusler reference fails to meet the claim limitation in which Applicant amended in the preamble of the claim. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CamLinh Nguyen whose telephone number is (571) 272 - 4024. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic can be reached on (571) 272 - 4023. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nguyen, Cam-Linh

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LN



**ALFORD KINDRED
PRIMARY EXAMINER**